# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 470.

GEORGE J. CROSSLEY (PETITIONER ON BEHALF OF SALTER D. WORDEN) AND SALTER D. WORDEN, APPELLANTS,

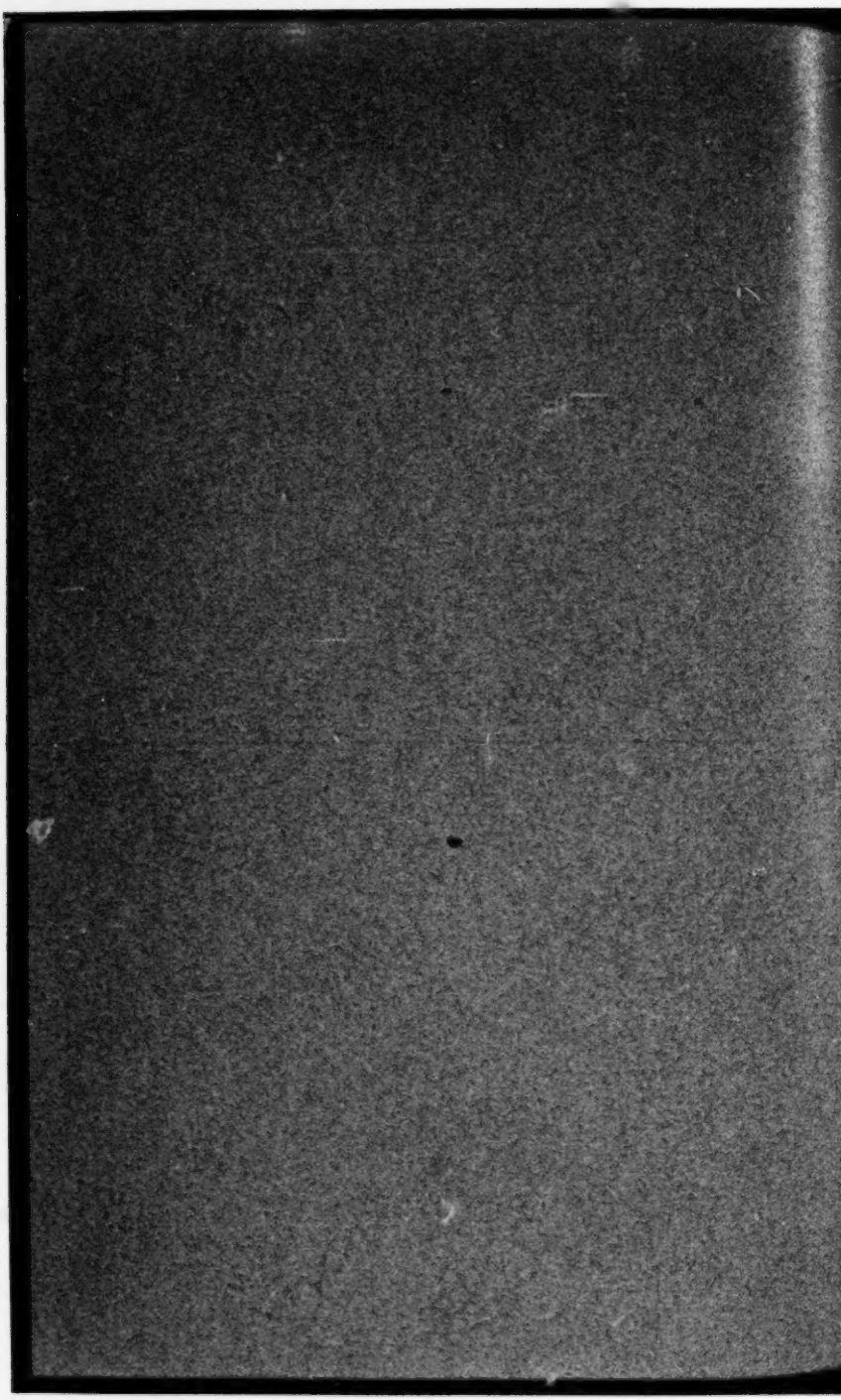
*vs.*

THE STATE OF CALIFORNIA AND CHARLES AULL, WARDEN OF THE STATE PRISON OF THE STATE OF CALIFORNIA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

FILED OCTOBER 9, 1897.

(16,683.)



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*vs.*

THE STATE OF CALIFORNIA AND CHARLES AULL, WARDEN OF THE STATE PRISON OF THE STATE OF CALIFORNIA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 20, 1897.

1 *Petition and Complaint for Writ of Habeas Corpus.*

In the Circuit Court of the United States of the Northern District of California.

In the Matter of SALTER D. WORDEN (on *Habeas Corpus*). No. 12381.

Now comes George J. Crossley, on behalf of Salter D. Worden, and by this his verified petition respectfully represents and shows—

That the said Salter D. Worden is unlawfully and illegally restrained of his liberty by Charles Aull, the warden of the State prison of the State of California at Folsom, in the county of Sacramento and State of California, at said State prison at Folsom aforesaid and within the northern district of the State of California.

That said Worden is now and at all times herein mentioned was a citizen of the United States and a citizen of the State of California, and so is and was at all times a person within and subject to the jurisdiction and laws of the State of California; that the said Worden has by the State of California, and while within its jurisdiction and subject to its laws, been deprived of his liberty without due process of law, and that the said Worden has also by the State of California, and while within its jurisdiction and subject to its laws, been denied the equal protection of its laws, all contrary to and in actual violation of the rights of the said Worden as a citizen of the

2 United States that are secured to him by the laws of the United States and by the fifth and fourteenth amendments to the Constitution of the United States, and all in contravention of the provisions of the laws and the Constitution accordingly as amended and in force.

That the said State of California, by its laws in force and effect at all times herein mentioned, provides that—

"All murder which is perpetrated by means of poison or lying in wait, torture, or by any other kind of wilful, deliberate, and premeditated killing, or which is committed in the perpetration or attempt to perpetrate arson, rape, robbery, burglary, or mayhem, is murder in the first degree, and all other kinds of murder is of the second degree;"

And that the punishment for murder in the first degree shall be that—

"Every person guilty of murder in the first degree shall suffer death or confinement in the State prison for life, at the direction of the jury trying the same, or upon a plea of guilty, the court shall determine the same, and every person guilty of murder in the second degree is punishable by imprisonment in the State prison not less than ten years."

That by the provisions of the constitution and laws of said State of California the jury in all criminal cases is the exclusive judge of the degree of the crime, including all cases of murder or manslaughter; that by reason of the laws of said State it is the duty of

the court upon a trial for murder to submit the question of the degree of the crime to the jury and to permit the jury to have sole determination thereof; that the constitution and laws of said
3 State, as aforesaid, were in force at all times herein mentioned.

That upon September 20th, 1894, said State of California caused an information to be filed in its superior court of the county of Yolo therein, and within said northern district of the State of California, charging that the said Worden did, on or about the eleventh day of July, 1894, in the county of Yolo, in the State of California, then and there being, did wilfully, unlawfully, feloniously, and of his malice aforethought kill and murder a human being, Samuel C. Clark, but that upon the second day of October, 1894, the said Worden was arraigned in said superior court upon said charge and pleaded not guilty; that upon October seventeenth, 1894, said Worden appeared in said superior court, said cause was called for trial, proceeded, a jury was impanelled and sworn to try the case, and said trial continued from day to day until and including the ninth day of November, 1894, upon which day the jury rendered a verdict finding the said Worden "guilty of murder in the first degree;" that thereafter and upon the sixteenth day of November, 1894, and upon said verdict the said superior court of said State of California in and for said county of Yolo rendered judgment, wherein said Worden was adjudged guilty of murder in the first degree and by the order of said court committed, and pursuant to said order thereafter delivered into the custody of the said Charles Aull, warden of the State prison, to be kept in close confinement until thereafter said Worden should be hung by the neck until dead, and that said Worden is now in the custody of said Aull; that
4 thereafter the time when said Worden should be so hanged, as aforesaid, was fixed and set for Friday, the 4th day of June, 1897; that by reason of said judgment and the order of said court, as aforesaid, the said Worden is by the said Charles Aull unlawfully and illegally restrained of his liberty and imprisoned.

That the said verdict, judgment, and the order of said court whereby said Worden is restrained and imprisoned, as aforesaid, are wholly void, illegal, and unlawful; that the same has been without due process of law and because said Worden has by said State of California been denied the equal protection of its laws, and in this behalf the said petitioner shows that the evidence upon which said verdict so rendered, together with the charge and instructions of the said superior court, has been incorporated in a bill of exceptions, and is of record in said court and is part of the record of said action, of which said verdict and judgment are also a part; that it appears from the record of the said court in said cause, as aforesaid, that said court had no jurisdiction to render such judgment because the fact of record, as aforesaid, shows without contradiction that Worden, with others, on the eleventh day of July, 1894, so injured the track of that part of the Southern Pacific railroad that lies between Broderick and Davisville that some time after Worden had left and gone some miles away from the

place of injury an engine and train of cars, while passing over said track between Broderick and Davisville, when it reached the place of said injury thereto and by reason thereof was de-
5 railed and the engine was precipitated into a swamp or slough in such manner that said precipitation caused the death of said Samuel C. Clark at a time when said evidence shows that Worden was and had been for some time one or more miles away from the point where the said derailment occurred, and that none of the other persons who were charged with him were anywhere in the vicinity at that time; that there was no evidence whatever upon said trial, as affirmatively appears on said record, that it was the purpose of said Worden, or of any one acting with him, to cause the death of the said Clark, or that said Worden or that any of them knew or expected or believed that said Clark would be killed by reason of the injury done to the track, as aforesaid, and that said charge of murder, as appears on said record, was wholly upon and evidenced because that by reason of the wrongful act of said Worden and those with him in injuring said track said train became derailed, precipitating said engine, as aforesaid, whereby said Clark was killed, it being merely assumed by the State that by implication of law from the fact of the commission of said wrongful act in injuring said track which subsequently caused the death of said Clark and not by any evidence whatever either showing or tending to show that said Worden ever manifested any express or definite purpose to take the life of said Clark, or that the same had been manifested or expressed by any of those charged with him.

That there was no evidence before said jury on said trial, as appears by said record, either showing or tending to show that said kill-
ing of said Clark was perpetrated by means of poison, or by
6 lying in wait, or by torture, or by any other kind of wilful deliberate, and premeditated killing, or was committed in the perpetration of or attempt to perpetrate arson, rape, robbery, burglary, or mayhem; that said evidence, as appears in said record, only shows or tends to show that said Worden was guilty at most, if of any unlawful homicide, of murder in the second degree under the laws of said State, there being no evidence of any premeditated purpose to kill.

That said State of California, through its said superior court, only submitted to said jury the question as to whether or not Worden was guilty of murder in the first degree, and would not and did not permit said jury to determine the question of the degree of murder therein, or to find the said Worden guilty of murder in the second degree; that there was no evidence whatever before said jury, as appears in said record, that either defendant or any of those charged with him were guilty of murder in the first degree, and by reason of the failure and refusal of the said State of California, acting by and through its said superior court, to permit said jury to determine the degree of the crime or to render a verdict of murder in the second degree, as aforesaid, which, by its constitution and laws now and then in force, it is exclusively the province of said jury to determine, and which determination is, in all other cases in said

State, under said constitution and laws, as aforesaid, left to the sole determination of the jury, and said Worden, in contravention of the Constitution of the United States as amended, as aforesaid, has been deprived and is now being deprived by said State of California of his liberty without due process of law, and has by said State been denied the equal protection of its laws, as aforesaid, all
7 within the meaning of the said Constitution of the United States as amended, as aforesaid.

That Worden has appealed to the supreme court of said State and has applied to the governor of said State to be relieved of said judgment, as he is entitled to be under its laws, and has tried in all possible manner to have said State restore to him his rights under the Constitution of the United States, as aforesaid, and to be released from such restraint and imprisonment, and has demanded of said Aull that he be so released; but all said appeals, applications, and demands have been denied, and said Worden is by said State denied any remedy or means whatever whereby he can be relieved from the operation of said unlawful judgment and released from said unlawful and illegal imprisonment and restraint of his liberty on the part of said Aull, as aforesaid, and that he has no plain, speedy, or adequate remedy, either at law or otherwise, under the laws of said State at all.

That said Worden is a citizen of the United States and the State of California and a resident of said northern district, and, being such citizen and resident, he claims that he is entitled to the protection of this court to secure him against being deprived by said State of California of his liberty and his life without due process of law, as aforesaid, and to prevent his being denied by said State of California the equal protection of its laws, as aforesaid, which is against and in contravention of the provisions of the Constitution of the United States and the amendments thereof, as aforesaid, and which is violated by the aforesaid imprisonment and re-
8 straint of the liberty of said Worden by the said Aull, as aforesaid.

Furtherm re, this petitioner in behalf of the said Salter D. Worden sho s that as further cause and reason why the said imprisonment and restraint of the said Worden is illegal and unlawful that it appears from the record in the said superior court of the said State of California in and for said county of Yolo that the train of cars of which said Samuel C. Clark was the engineer, and that was derailed as hereinbefore stated, was not a regular freight or passenger train of the corporation, Southern Pacific Company, operating said piece of railroad above described, but was in truth and in fact a special train; that, aside from its necessary crew of employés who were conducting the same, consisting of said Clark as engineer, of a fireman, a conductor, two brakemen, twenty-two United States soldiers, and one other person, *and that* there was upon said train a considerable amount of United States mail which had been delayed in transmission, and that the effect of the derailment of said train, as appears from said record, constituted an obstruction or stopping of the transmission of United States mail, and was a restraint and

retarding of the interstate commerce of the United States—that is to say, the commerce carried on between the State of California and other States of the Union—and that by reason thereof it appears from said record that the offense committed by said Worden was, if anything, an offense against the laws of the United States and in contravention of the laws of the United States, and particularly of sections 5440 and 3995 of the Revised Statutes of the United States and of an act of Congress of July 2, 1890,
9 entitled "An act to prevent trusts and monopolies;" that, as appears by said record, in the trial of said cause the State of California, through its said superior court of said county of Yolo, assumed to try and did try the said Worden for an offense or by reason of an offense made solely punishable by the laws of the United States; that, as appears in said record, there was no evidence that the said Worden or any of those charged with him had either wilfully or with deliberation or with premeditation undertaken to cause the death of the said Samuel C. Clark; that in said record it appears that there was no evidence whatever of any specific or actual purpose on the part of the said Worden or of any of those charged with him to take the life of the said Clark or the life of any other person, and that the only kind of murder, under the laws of the State of California, that from said record is in anywise shown or could be assumed to be shown would be that murder which is due to the fact that by the commission of a felony the death of a person results, that though not actually intended was nevertheless the consequential result of the commission of an act amounting to a felony under the laws of said State; that it does not appear from the evidence contained in said record that the act of the said Worden and those charged with him in so injuring the track of said railroad, as aforesaid, was of such a nature or committed under such circumstances and with such purpose or intent that it was or could have been a felony under the laws of the State of California, but, on the contrary, it appears from said record that the purpose and object of the said Worden in the commission of said act was the
10 commission of a crime or offense against the laws of the United States and in contravention of its statutes.

That it appears from said record that the city of Sacramento and the vicinity thereof about that time was under the control of the military authorities of the United States, and that they at that time had charge and control of the train of cars that was derailed, and that such train was exclusively engaged in the carrying or transportation of the mail of the United States and the soldiers of the United States guarding the same and under the command of Colonel William M. Graham, of the United States Army, who at that time was acting under and pursuant to orders of the President of the United States, and that such train was not engaged for any other purpose at that time; that therefore it appears affirmatively from said record that the offense committed, if any offense was committed by the said Worden, was solely cognizable in the courts of the United States, who had and have exclusive jurisdiction thereof, and that in the trial and conviction of the said Worden, as afore-

said, the State of California, acting through its superior court in and for said Yolo county, as aforesaid, has assumed and undertaken to cause the warden of its State prison to so unlawfully and illegally restrain and imprison the said Worden and keep him in custody for the purpose of taking the life of the said Worden by causing him to be hanged until he is dead.

Therefore petitioner prays, on behalf of said Worden, a writ of *habeas corpus* issue out of this court, directed to the said
11 Charles Aull, the warden as aforesaid, commanding him that he have and produce before this court, at such time and in such manner as the court shall deem proper, the body of the said Salter D. Worden, together with the terms and causes of his detention and imprisonment; that said imprisonment be adjudged illegal and unlawful, and that said Salter D. Worden be discharged from said imprisonment; and, further, that in order that the court may do justice in the premises that the court direct, as ancilliary, to said writ of *habeas corpus*, that there be issued out of this court and directed to the superior court of said State of California in and for said county of Yolo a writ of certiorari, commanding said court to certify and to cause to be produced at the hearing upon said matter of *habeas corpus* a full, true, and correct transcript of the record and proceedings of said court in the said cause, which is known therein as "The People of the State of California *vs.* S. D. Worden *et al.*," in order that upon the hearing of the matter of said *habeas corpus* that this court may fully determine the true cause and nature of said imprisonment, and in furtherance of justice cause that to be done which ought to be done; and for such other and further relief as may be proper in the premises.

And, furthermore, this petitioner avers upon his information and belief that it is the purpose of the said Charles Aull, warden as aforesaid, to execute the said Worden upon Friday, the 4th day of June, 1897, and that it is therefore necessary that a writ of *habeas corpus*, if issued out of this court, be in the form of a writ of *habeas corpus cum causa*, requiring the marshal to whom the service
12 of the same shall be directed or entrusted at the time of making such service to take possession of the body of the said Salter D. Worden and keep him in custody, and produce him before the court at such time as the court may direct, and hold him subject to the order of this court.

And this petitioner now makes this application, as hereinbefore appears, at the request of the said Worden and in his behalf, and because the said Worden is now confined, as aforesaid, in the State prison at Folsom, in the county of Sacramento, in the State of California, more than one hundred miles distant from this city of San Francisco.

GEORGE J. CROSSLEY,
*Petitioner, in Behalf of Salter D. Worden.*

GEO. W. MONTEITH,
*Attorney for Petitioner and for said Salter D. Worden.*

Subscribed and sworn to before me this 3d day of June, 1897, by George J. Crossley.

W. J. COSTIGAN,
*Commissioner U. S. Circuit Court,*
*Northern District of California.*

(Endorsed:) Filed June 3d. W. J. Costigan, clerk.

13 At a stated term, to wit, the March term, A. D. 1897, of the circuit court of the United States of America of the ninth judicial circuit in and for the northern district of California, held at the court-room, in the city and county of San Francisco, on Thursday, the 3rd day of June, in the year of our Lord one thousand eight hundred and ninety-seven.

Present: Honorable William B. Gilbert, circuit judge.

In the Matter of SALTER D. WORDEN, on *Habeas Corpus.* No. 12381.

*Order Denying Writ of Habeas Corpus and Dismissing Petition.*

In this matter the petition on behalf of Salter D. Worden came on regularly for hearing, Geo. W. Monteith and J. Taylor Rogers, Esqs., appearing on behalf of said petitioner. After argument of counsel duly heard and considered it was ordered that said application for a writ of *habeas corpus* be, and is hereby, denied and the petition therefor dismissed. To the making of the foregoing order said counsel made application for and was allowed an exception.

14 At a stated term, to wit, the March term, A. D. 1897, of the circuit court of the United States of America of the ninth judicial circuit in and for the northern district of California, held at the court-room, in the city and county of San Francisco, on Thursday, the 3rd day of June, in the year of our Lord one thousand eight hundred and ninety-seven.

Present: Honorable William B. Gilbert, circuit judge.

In the Matter of SALTER D. WORDEN, on *Habeas Corpus.* No. 12381.

*Order Denying Motion for Issuance of Writ of Supersedeas.*

Ordered that the motion for issuance of writ of supersedeas herein be, and is hereby, denied. To the making of the foregoing order counsel for petitioner asked for and was allowed an exception.

15 *Notice of Appeal.*

In the Circuit Court of the United States in and for the Northern District of California.

In the Matter of SALTER D. WORDEN, on *Habeas Corpus.*

The petitioner and Salter D. Worden, feeling themselves aggrieved by the order heretofore entered and made in the circuit court of the

United States in and for the northern district of California, on the first day of June, 1897, denying the application of petitioner on behalf of the said Salter D. Worden for a writ of *habeas corpus*, as prayed for in the petition therefor herein and dismissing the petition therein, do hereby appeal from said order of said circuit court to the Supreme Court of the United States, and prays that a transcript of the records and proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated at San Francisco, Cal., June 3rd, 1897.

GEO. W. MONTEITH,
*Attorney for Petitioner and for said Salter D. Worden.*

(Endorsed:) Received copy of the within notice of appeal this 3d day of June, 1897. W. F. Fitzgerald, att'y general of California, by Henry E. Carter, dep. att'y general. Filed June 3d, 1897. W. J. Costigan, clerk.

16 In the Supreme Court of the United States of America.

In the Matter of the Petition of SALTER D. WORDEN, on *Habeas Corpus.*

GEORGE J. CROSSLEY and SALTER D. WORDEN, Appellants and Plaintiffs in Error,
*vs.*
THE STATE OF CALIFORNIA and CHARLES AULL, Warden of the State Prison of the State of California, Respondents and Defendants in Error.

*Assignment of Errors.*

And now, to wit, on this 3rd day of June, 1897, George J. Crossley, petitioner, and Salter D. Worden, above-named appellants and and plaintiffs in error, come by Geo. W. Montieth, their attorney, and say that in the record and proceedings of the above-entitled matter there is manifest error, in this, to wit:

1st. The circuit court of the United States in and for the northern district of California erred in denying the application on behalf of the said Salter D. Worden for a writ of *habeas corpus*, as prayed for in the petition herein, in the matter of said application in *in* said court and in dismissing the petition therefor, because it appears by the record and in said petition, from the facts therein alleged and shown, that the said Salter D. Worden is restrained of his liberty and is in custody without due process of law, within the meaning of the 5th and 14th amendments to the Constitution of the United States.

2nd. That said circuit court erred in denying the application for a writ of *habeas corpus* and in dismissing the petition therefor, as aforesaid, because it appears by the record that the said petition for the writ of *habeas corpus* aforesaid sufficiently shows that the said Salter D. Worden is by the State of California deprived of his

liberty without due process of law, within the meaning of the 5th and 14th amendments of the Constitution of the United States, in the restraint and imprisonment of the said petitioner set forth and appearing.

17 3rd. That said circuit court erred in denying the application for a writ of *habeas corpus* and dismissing the petition therefor, as aforesaid, because it appears by the record that the petition for a writ of *habeas corpus* aforesaid sufficiently shows that the said Salter D. Worden is by the said State of California being deprived of his liberty, and upon the 4th day of June, 1897, will be deprived of his life by reason of his having been placed in the unlawful custody and being under the unlawful restraint and imprisonment of the said Charles Aull, at the State prison of the State of California, without due process of law, within the meaning of the 14th amendment of the Constitution of the United States.

4th. That the said circuit court erred in denying the application for a writ of *habeas corpus* aforesaid and in dismissing the petition therefor, because it appears by record that the petition for said writ of *habeas corpus* aforesaid sufficiently shows that the State of California has denied to the petitioner, a person within its jurisdiction, the equal protection of its laws within the meaning of the 14th amendment of the Constitution of the United States.

5th. That the circuit court erred in denying the applicatian for a writ of *habeas corpus* aforesaid and in dismissing the petition therefor, because it shows by record that the petition for said writ of *habeas corpus* aforesaid sufficiently shows that restraint and imprisonment of said Salter D. Worden, as set forth in said petition, are due to the fact that the said State of California has deprived said Salter D. Worden of his liberty and is about to deprive him of his life, and has denied him an equal protection of its laws, contrary to the form, force, and effect of the statutes of the United States and of the Constitution of the United States and in violation of the constitutional rights of the said Salter D. Worden.

6th. The said circuit court erred in denying the application for the writ of *habeas corpus* and dismissing the petition therefor, as aforesaid, because it appears by the record that the petition for *habeas corpus* aforesaid sufficiently shows and is cause for the granting and issuance of the writ of *habeas corpus* therein prayed for under the laws *of* the Constitution of the United States; that the denial thereof was in contravention of *its* statutes of the United States in such cases made and provided and of the Constitution of the United States.

7th. That said circuit court erred in denying the application for the writ of *habeas corpus* aforesaid *in* dismissing the petition thereof, because it appears by the record that said petition shows that the offense committed by the said Worden was solely an offense under the laws of the United States, and that *from* that reason it appears from the record that the State of California, through its courts, had not jurisdiction of either the said Slater D. Worden or of the subject-matter of the cause wherein he was convicted, as appears in said petition.

8th. That said circuit court erred in denying the application for the writ of *habeas corpus* aforesaid and in dismissing the petition therefor, because it appears by the record that at the — of the commission of the alleged offense the premises and the place where it was committed *was* wholly under the custody and control and entirely within the jurisdiction of the military authorities of the United States, acting under and pursuant to the orders and directions of the President of the United States, and that the laws of the State of California were at that time, with reference to the matters
18 set forth, inoperative and suspended and the entire jurisdiction within the authority of the United States and of its courts, and that the State of California and its courts were wholly without jurisdiction to act in the premises.

9th. The said circuit court erred in denying the application for the writ of *habeas corpus* and in dismissing the petition therefor, as aforesaid, because it appears by the record that the petition for the writ of *habeas corpus* aforesaid sufficiently shows that the State of California and its courts had no jurisdiction whatever in the premises, and that the case complained —, if anything, were in defiance of the law and authority of the United States, and that all matters connected therewith belonged exclusively to the jurisdiction of the United States or of its courts.

Wherefore the said appellants and plaintiffs in error pray that the order of the circuit court in and for the northern district of California, entered upon the 3rd day of June, 1897, denying the said application of said petitioner on behalf of Salter D. Worden for the writ of *habeas corpus* therein prayed for and dismissing said petition be reversed, and that said circuit court be ordered to vacate said order and to grant and issue said writ of *habeas corpus*, as prayed for in the petition, together with the ancilliary process therein sought, in order that the unlawful restraint and imprisonment of the said petitioner and of the deprivation by the State of California of the said Salter D. Worden's liberty by the State of California and by the said Charles Aull and by the denial of the said State of California to said Salter D. Worden, a person within its jurisdiction aforesaid, of the equal protection of its laws, as in said petition appears, may be inquired into, and that if unlawful, as alleged, that the said petitioner may be discharged.

Dated San Francisco, June 3rd, 1897.

GEO. W. MONTEITH,
*Att'y for Geo. J. Crossley and Salter D. Worden,*
*Appellants and Plaintiffs in Error.*
J. G. MAGUIRE,
*Also Appearing as Attorney for Appellants*
*and Plaintiffs in Error.*

(Endorsed:) Received a copy of the within assignment this June 3rd, 1897. W. F. Fitzgerald, attorney gen. of California, by Henry E. Coster, dep. att'y general. Filed June 3, 1897. W. J. Costigan, clerk.

19 At a stated term, to wit, the March term, A. D. 1897, of the circuit court of the United States of America of the ninth judicial circuit in and for the northern district of California, held at the court-room, in the city and county of San Francisco, on Thursday, the 3rd day of June, in the year of our Lord one thousand eight hundred and ninety-seven.

Present: Honorable William B. Gilbert, circuit judge.

In the Matter of SALTER D. WORDEN, on *Habeas Corpus.* No. 12381.

*Order Granting an Appeal.*

Now comes Geo. W. Montieth, Esq., attorney for petitioner, on behalf of Salter D. Worden, and moves the court for an order granting an appeal to the Supreme Court of the United States herein. Whereupon it was ordered that said motion be, and is hereby, granted and an appeal to the Supreme Court of the United States is hereby allowed.

20 *Order Allowing Appeal to the Supreme Court of the United States.*

In the Circuit Court of the United States in and for the Northern District of California.

In the Matter of SALTER D. WORDEN, on *Habeas Corpus.*

It appearing to the court that the petitioner herein and the said Salter D. Worden, in whose behalf this proceeding on *habeas corpus* has been instituted, *has* given due notice of appeal herein, as required by law, and have otherwise complied with the statutes in such cases made and provided—

It is hereby ordered that the appeal of the said petitioner, Geo. J. Crossley, and said Salter D. Worden, as appellants and plaintiffs in error therein, and against The State of California and Charles Aull, warden of the State prison *at* said State, as respondents and defendants in error, to the Supreme Court of the United States be, and the same is hereby, granted agreeable to the laws of the United States in such cases made and provided.

Done in open court this 3d day of June, 1897.

WILLIAM B. GILBERT, *Judge.*

(Endorsed:) Filed June 3rd, 1897. W. J. Costigan, clerk.

21 At a stated term, to wit, the March term, A. D. 1897, of the circuit court of the United States of America of the ninth judicial circuit in and for the northern district of California, held at the court-room, in the city and county of San Francisco, on Thursday, the 3rd day of June, in the year of our Lord one thousand eight hundred and ninety-seven.

Present: Honorable William B. Gilbert, circuit judge.

In the Matter of SALTER D. WORDEN, on *Habeas Corpus*. No. 12381.

*Order Fixing Amount of Bond on Appeal.*

Ordered that the bond on appeal to the Supreme Court of the United States herein be, and is hereby, fixed at the sum of $250.00, to be approved by Honorable William W. Morrow, circuit judge.

22 In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

In the Matter of SALTER D. WORDEN, on *Habeas Corpus*.

*Bond on Appeal.*

Know all men by these presents that we, George J. Crossley, petitioner, on behalf of Salter D. Worden, as principal, and James H. Barry, —— ——, as sureties, are held and firmly bound unto the State of California and Charles Aull, warden of the State prison of the State of California, in the full and just sum of two hundred and fifty dollars, to be paid to the said State of California and the said Charles Aull, warden as aforesaid, their attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this thirs day of June, in the year of our Lord one thousand eight hundred and ninety-seven.

Whereas lately, at a session of the circuit court of the United States for the northern district of California, in a proceeding in said court, wherein application by George J. Crossley, petitioner on behalf of Salter D. Worden, for a writ of *habeas corpus*, said application was by the said circuit court denied and the petition therefor dismissed by an order of said court, and the said Crossley

23 and said Worden having obtained from said court an order allowing an appeal herein to reverse the said order denying said writ and dismissing said petition in the aforesaid court, and a citation directed to the said State of California and to said Charles Aull, warden as aforesaid, is about to be issued, citing and admonishing them to be and appear at a United States Supreme Court, to be holden at Washington, District of Columbia, on the fourth day of October, 1897, next:

Now, the condition of the above obligation is such that if the said Geo. J. Crossley and the said S. D. Worden shall prosecute said appeal to effect and shall answer all damages and costs that shall be awarded against them if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

GEO. J. CROSSLEY. [SEAL.]
JAMES H. BARRY. [SEAL.]
JAMES TAYLOR ROGERS. [SEAL.]

UNITED STATES OF AMERICA,
*Northern District of California, City and County of San Francisco,* } ss:

James H. Barry and James Taylor Rogers, being duly sworn, each for himself deposes and says that he is a householder in said district and is worth the sum of two hundred and fifty dollars, exclusive of property exempt from execution and over and above all debts and liabilities.

JAMES H. BARRY.
JAMES TAYLOR ROGERS.

Subscribed and sworn to before me this 3d day of June, A. D. 1897.

WM. W. MORROW,
*Judge of U. S. Circuit Court, Northern District of California.*

24 (Endorsed:) Bond on appeal to Supreme Court of the United States. Form of bond and sufficiency of securities approved. Wm. W. Morrow, judge. Filed June 7, 1897. W. J. Costigan, clerk, by W. B. Beaizley, deputy clerk.

25 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

In the Matter of SALTER D. WORDEN, on *Habeas Corpus.*

*Certificate to Transcript.*

I, W. J. Costigan, clerk of the circuit court of the United States of America of the ninth judicial circuit in and for the northern district of California, do hereby certify the foregoing pages, numbered from 1 to 24, inclusive, to be a full, true, and correct copy of the record and proceedings in the above-entitled matter, and that the same together constitute the transcript of the record herein upon appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court this 30th day of June, A. D. 1897.

[Seal U. S. Circuit Court, Northern Dist. Cal.]

W. J. COSTIGAN,
*Clerk United States Circuit Court,*
*Northern District of California.*

26 UNITED STATES OF AMERICA, ss:

To the State of California and Charles Aull, warden of the State prison of the State of California, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, on the second day of August, A. D. 1897, pursuant to a notice of appeal and assignment of errors

duly served and filed in this circuit court and with the clerk of this court and in his office, in a certain action and appeal herein to the Supreme Court of the United States wherein George J. Crossley, petitioner on behalf of Salter D. Worden, and Salter D. Worden are appellants and plaintiffs in error and you are defendants in error, to show cause, if any there be, why the order of the said circuit court denying the application for a writ of *habeas corpus* and dismissing the petition therefor, as therein mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Wm. W. Morrow, judge of the circuit court of the northern district of California, this 18th day of June, A. D. 1897, and of the Independence of the United States the one hundred and twenty-first.

WM. W. MORROW,
*Circuit Judge.*

27 UNITED STATES MARSHAL'S OFFICE,
NORTHERN DISTRICT OF CALIFORNIA.

I hereby certify that I received the within citation on the 26th day of June, 1897, and personally served the same on the 28th day of June, 1897, on Charles Aull, warden of the State prison of the State of California, by delivering to and leaving with Charles Aull, warden of the State prison of the State of California, said defendant named therein, personally, at the county of Sacramento, in said district, a copy thereof.

BARRY BALDWIN,
*U. S. Marshal,*
By H. M. MOFFITT,
*Office Deputy.*

San Francisco, June 30th, 1897.

UNITED STATES MARSHAL'S OFFICE,
NORTHERN DISTRICT OF CALIFORNIA.

I hereby certify that I received the within citation on the 29th day of June, 1897, and personally served the same on the 29th and 30th days of June, 1897, on the State of California by delivering to and leaving with Jas. H. Budd, governor of the State of California, on said date, to wit, June 29th, 1897, and by delivering to and leaving with W. F. Fitzgerald, attorney general of the State of California, on June 30th, 1897, at the city and county of San Francisco, in said district, each a copy thereof.

BARRY BALDWIN,
*U. S. Marshal,*
By S. P. MONCKTON,
*Office Deputy.*

San Francisco, June 30th, 1897.

[Endorsed:] In the Supreme Court of the United States. Geo. J. Crossley and Salter D. Worden, plaintiffs in error, *vs.* The State of California and Charles Aull, warden, etc., defendants in error. Citation. Filed June 30th, 1897. W. J. Costigan, clerk U. S. circuit court, northern district of California.

Endorsed on cover: Case No. 16,683. N. California C. C. U. S. Term No., 470. George J. Crossley (petitioner on behalf of Salter D. Worden) and Salter D. Worden, appellants, *vs.* The State of California and Charles Aull, warden of the State prison of the State of California. Filed October 9, 1897.